UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

Sazerac Distillers, LCC dba
Barton Brands of California, Inc.,

And **Case No. 21-CA-162489**

Food, Industrial & Beverage
Warehouse, Drivers and Clerical
Employees, Local 630, International
Brotherhood of Teamsters

RESPONDENT'S BRIEF TO THE HONORABLE ARIEL L. SOTOLONGO

Respectfully submitted,

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INTRODUCTION

The above-entitled matter came on for hearing, pursuant to notice, before the Honorable Ariel L. Sotolongo, Administrative Law Judge, at the National Labor Relations Board, Region 21 Office at 888 S. Figueroa Street, Los Angeles, California, on May 9, 2016. At the conclusion of the hearing, Judge Sotolongo ordered that post hearing briefs are due on June 13, 2016, which was extended to June 17, 2016. Accordingly, Respondent, through undersigned counsel, submits this post hearing brief.

I. Business of the Employer

At all times material hereto, Respondent has been a limited liability company with an office and place of business at 2202 E. Del Amo Blvd., Carson, California (the "Carson facility"), and has been engaged in the business of distilling and bottling adult distilled spirits at the Carson facility.

II. Charging Party Union

Since at least 2012, Food, Industrial & Beverage Warehouse, Drivers and Clerical Employees, Local 630, International Brotherhood of Teamsters (the "Union" or "Teamsters Local 630" or "Local 630"), a labor organization within the meaning of the Act, has been recognized by Respondent as the exclusive bargaining representative of a certain bargaining unit at the Carson facility, which includes processing employees. GC Exhibit 1(g) Par. 7 of Amended Complaint and GC Exhibit 1(i) Par. 7 of Answer to Amended Complaint.

III. The Alleged Unfair Labor Practice

Mr. Javier Sanchez, the primary subject of this proceeding, was a processing department and bargaining unit employee at the Carson facility on July 28, 2015. Counsel for General Counsel contends that Respondent violated Section 8(a)(1) of the Act on July 28, 2015, by

denying Mr. Javier Sanchez's alleged request for the presence of Union shop steward [identified at the hearing as Ms. Avila] at an alleged investigatory interview. GC 1(g) Par. 8 and Tr. 11.

"The remedy sought in this case by the General Counsel is a notice posting to reassure the bargaining employees who remain working for Respondent that Respondent will not disregard it in the future." Tr. 11, lines 22-25.

Respondent denies it committed the alleged unfair labor practice, and asks the Administrative Law Judge to dismiss the Amended Complaint in its entirety. GC 1(i) and Tr. 12-13.

IV. Witnesses and Exhibits

A. Witnesses

1. GC and Charging Party Witness.

Counsel for General Counsel's only witness was Mr. Sanchez, and the Charging Party presented no witnesses. Mr. Javier Sanchez was a processing department and bargaining unit employee at the Carson facility on July 28, 2015.

2. Respondent's Witnesses (Sequestered). Respondent's witnesses were:

Mr. Jose Quinto. He was employed by Respondent from 1999 to January 2016. He was assistant plant manager on July 28, 2015, but is currently employed elsewhere at a company unrelated to Respondent. Tr. 67, 74.

Mr. Erik Batcke. He is the Processing Department supervisor who was Mr. Sanchez's direct supervisor on July 28, 2015. Tr. 76-77.

B. Exhibits

1. General Counsel's Exhibit No. 1, Index and Description of Formal Documents (hereinafter "GC_.")

2. Respondent's Exhibit No. R-1 (hereinafter "R-1.")

C. Stipulations

It was stipulated that the Company's records show Mr. Sanchez clocked out on July 28, 2015, at 2:10 p.m. Tr. 95.

V. The Issues

1. Whether the July 28 meeting in the conference room was an "investigatory interview" within the meaning of *Weingarten.*

2. If yes, whether the preponderance of the credible and admissible evidence established that Mr. Sanchez requested Ms. Avila on July 28 and Respondent representatives Messrs. Quinto and Batcke denied that request.

3. If yes, whether Mr. Sanchez waived his rights by not requesting Steward Rameriz and continuing without objection.

VI. Position of Respondent.

Respondent submits the answers to Nos. 1 and 2 above are "No." As to No. 3, Respondent's position is it is not applicable, unless the answer to No. 2 is yes, and in that case, Respondent's position with regard to No. 3 in that case, is "yes," all for the following reasons.

1. Counsel for General Counsel (and Charging Party) did not meet the applicable burden of proof to establish by a preponderance of the admissible and credible evidence that Respondent committed the alleged unfair labor practice.

2. While arguably a close call, it is submitted that the very short meeting on July 28, 2015, with Mr. Sanchez was not an "investigatory meeting." Mr. Sanchez did not testify that he knew or believed the purpose of the meeting was to secure information from him that would form the basis of the discipline to be imposed. Even if it is found he did, Mr. Sanchez waived his rights as he did not request another steward when Ms. Alvia was allegedly unavailable because she was "busy." Mr. Sanchez's own testimony (if it is believed he made the request) was that he said nothing when he was told Avila was busy. He admitted at the hearing he did not want the other steward, Mr. Rameriz , the processing department steward who was at work that day. *Weingarten* rights do not attach to such a meeting. The Employer representatives made limited remarks about what a supervisor witnessed an employee doing that was a serious safety matter, and thus advised him he was suspended pending investigation. Mr. Quinto did not investigate Sanchez's every move or probe him about the intricate details of the situation in order to determine what may or may not have happened. He did not secure a written statement from the employee. It was a simple and clear matter. The employee saw his supervisor, Mr. Batcke, observe him smoking in the hazardous material unloading area, which is posted as a no smoking location. There was nothing material to discover from Mr. Sanchez and nothing was adduced from Mr. Sanchez at the meeting that was not seen by the supervisor and that otherwise formed the basis of the decision to discharge him on or about August 13, 2015 (with an effective date of August 10, 2015).

3. In any event, Respondent witnesses Messrs. Quinto and Batcke were the more credible witnesses, and Respondent asks that the Administrative Law Judge find so and credit their testimony over the uncorroborated testimony of Mr. Sanchez.

(a) Accordingly, and alternatively, if it is determined that the July 28 meeting was an "investigatory interview," the Administrative Law Judge should credit Respondent's witnesses Messrs. Quinto and Batcke and find that no request for representation was made by Mr. Sanchez nor denied by Mr. Quinto or Mr. Batcke on July 28, 2015, as alleged.

(b) Moreover, Respondent requests that an adverse inference be drawn against General Counsel's and Charging Party's case because of the absence of testimony from Union Steward Ms. Avila, Charging Party's only possible corroborating witness, as it creates an adverse presumption that her testimony would have been unfavorable to General Counsel's and Charging Party's case. There was no explanation for her absence. There was no evidence that she was subpoenaed and failed to appear or denied a request to be off to testify.

(c) In the further alternative, even if it is found that Mr. Sanchez requested Ms. Avila as Mr. Sanchez alleges, the ALJ should find that Mr. Sanchez did not testify that he knew or believed the purpose of the meeting was to secure information from him that would form the basis of the discipline to be imposed. Even if it is found he did, Mr. Sanchez waived his rights as he did not request another steward when Ms. Avila was allegedly unavailable because she was "busy." Mr. Sanchez's own testimony (if it is believed he made the request) was that he said nothing when he was told Avila was busy. Tr. 39, lines 17-23. He admitted at the hearing he did not want the other steward, Mr. Rameriz (Tr. 38, lines 1-2), the processing department steward who was at work that day. Tr. 44-45. In other words, he did not ask that the meeting be postponed or make the presence of Ms. Avila or another steward a condition of continuing the meeting. Tr. 46. In the final analysis, he was not disadvantaged by not having a steward present. Before changing his testimony, Mr. Sanchez testified he talked to Ms. Avila that day about the meeting (Tr. 61, lines 1-9; Tr. 64), requested a grievance form from her, but later testified he

talked to her a few days later. Regardless, he testified that he did put the alleged request and denial in the grievance form, but on cross examination admitted he did not (Tr. 42, line 8). Moreover, Company Ex. No. 1 firmly establishes that the issue was not raised on the grievance form. Further, he admitted on cross that he did not discuss it at any time later [until the filing of the charge in this case]. Tr. 64, lines 7-9.

4. Respondent respectfully requests that the Amended Complaint be dismissed in its entirety.

VII. Background and Facts

On July 28, 2015, processing supervisor Mr. Erik Batcke observed Mr. Javier Sanchez at approximately 1:45 p.m. smoking a cigarette in the hazardous material unloading area, where Respondent unloads high proof alcohol, which is flammable and explosive. Upon seeing Mr. Sanchez extinguishing his cigarette, Mr. Batcke removed himself from Mr. Sanchez's sight and called his supervisor, assistant plant manager José Quinto. Mr. Quinto instructed Mr. Batcke to bring Mr. Sanchez to the conference room near his office. Mr. Batcke located Mr. Sanchez in the tank area (his work area) and told him to follow him to the office for a meeting. Mr. Batcke did not tell Mr. Sanchez the purpose of the meeting nor did Mr. Sanchez ask any questions. It is admitted that there was no discussion between the two on the way to the conference room. Mr. Batcke deposited Mr. Sanchez in the conference room and went to Mr. Quinto's office and told him they were ready. Mr. Quinto's office is approximately 20 feet from the conference room. Shortly thereafter, Mr. Batcke and Mr. Quinto entered the conference room. Mr. Batcke spoke first telling Mr. Sanchez, in Mr. Quinto's presence, that he witnessed Mr. Sanchez smoking in a dangerous and hazardous material unloading area. He further said that as a supervisor and someone responsible for safety of the area, that Mr. Sanchez's conduct was completely

unacceptable and that the matter needed to be addressed right there. There was a short exchange about him smoking in this area and on Company time. Mr. Sanchez replied he was on a delayed break. Mr. Quinto advised Mr. Sanchez he was suspended pending investigation. They left the conference room. Mr. Sanchez clocked out at 2:10 p.m. Mr. Quinto then had the safety manager investigate the matter. Mr. Sanchez filed a grievance contesting his suspension on July 30, 2015, alleging "the discipline is inconsistent of the offense." There was no mention of or allegation relating to him being denied union representation in the grievance. Thereafter, on August 13, 2015, Mr. Sanchez was terminated (effective August 10). There was no evidence adduced that this issue of being denied union representation was raised until the filing of the charge in this matter on or about October 21. All of the above supports a finding that Mr. Sanchez did not make the request in the meeting on July 28 as alleged.

VIII. Argument

1. Burden of Proof – Counsel for General Counsel has the Burden of Proof.

a. It is well established that the General Counsel carries the burden of proving the elements of an unfair labor practice. Section 10(c) of the Act expressly directs that the violations may be adjudicated only "upon the preponderance of the testimony" taken by the Board. The Board's rules also state "the Board's attorney has the burden of proving violations of Section 8." Thus, throughout the proceedings, Counsel for General Counsel carries the burden of proving the elements of an unfair labor practice by a preponderance of the admissible and credible evidence.

b. <u>An Adverse Inference Should be Drawn Because of the Absence of Ms. Avila</u>. In evaluating this issue, Respondent submits that an adverse inference should be drawn against General Counsel and Charging Party's case because of the absence of testimony from

Union Steward Ms. Avila, a critical corroborating witness to their case -- their only possible corroborating witness, as it creates an adverse presumption that her testimony would have been unfavorable to General Counsel's and Charging Party's case. There was no explanation for her absence. There was no evidence that she was subpoenaed and failed to appear or denied a request to be off to testify.

NLRB precedent recognizes the failure to call available witnesses likely to have knowledge of particular matter and reasonably likely to be 'favorably disposed' to a party's case gives rise to an inference that such testimony would have been adverse to the party's case and consistent with the opposing position. See, for example, *Casa San Miguel, Inc.*, 320 NLRB 534, 576 (1995) wherein the ALJ found that General Counsel failure to call the wife of charging party to corroborate her husband's testimony, warranted an inference that her testimony would have been adverse to the General Counsel's case.

Similarly here, the failure of Counsel for General Counsel to produce at the trial Union Steward Avila, a material witness for their case, to corroborate the testimony of Mr. Sanchez renders Mr. Sanchez's versions of what occurred dubious, and also compels drawing an inference that if this absent witness had been produced, her testimony would not have been favorable to their case. Her absence not only strengthens the probative force of the Respondent's unimpeached witnesses, but of itself has probative force. The production of weak self-serving evidence, when strong evidence is available, can lead only to the conclusion that Avila's testimony would have been adverse to General Counsel's and Charging Party's case. Respondent had no idea that she would or would not be there. Avila was not named or identified in the Complaint. Moreover, Counsel for General and Charging Party have the burden of proof. Respondent does not have to prove something did not happen.

2. Weingarten Rights – Generally.

Section 8(a)(1) of the National Labor Relations Act provides a union-represented employee with the right to request the assistance of a union representative at an investigatory interview. See *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

In defining the parameters of an employee's rights under *Weingarten*, the U.S. Supreme Court has explained that: (1) the right to union representation "inheres in § 7's guarantee of the right of employees to act in concert for mutual aid and protection;" (2) the right arises "only in situations where the employee requests representation;" (3) the employee's right to request representation as a condition to participation in the interview "is limited to situations where the employee reasonably believes the investigation will result in disciplinary action;" (4) "exercise of the right may not interfere with legitimate employer prerogatives;" (5) the employee may carry on its investigation without interviewing the employee, leaving to the employee "the choice between having an interview unaccompanied by his representative or having no interview and foregoing any benefits that might be derived from one;" and (6) "the employer has no duty to bargain with any union representative who may be permitted to attend the investigatory interview." Weingarten does not require an employer to postpone an interview because the specific union representative requested is absent, as long as another union representative is available at the time of the interview.

3. What is an "Investigatory Interview?" What was the very brief July 28 "meeting" in this case?

Employees have a right to union representation at investigatory interviews where the employee has a reasonable belief that he will be disciplined based on what is adduced at the interview and specifically requests such representation. However, the Board has held that this

right does not attach where the disciplinary action has been determined and the employee is only being informed of the decision or where no further facts are required or sought by the employer.

In the case at hand, the ALJ should find that Mr. Sanchez did not testify that he knew or believed the purpose of the meeting was to secure information from him that would form the basis of the discipline to be imposed. Even if it is found he did, Mr. Sanchez waived his rights as he did not request another steward when Ms. Alvia was allegedly unavailable because she was "busy." Mr. Sanchez's own testimony (if it is believed he made the request) was that he said nothing when he was told Avila was busy. Tr. 39, lines 17-23. He admitted at the hearing he did not want the other steward, Mr. Rameriz (Tr. 38, lines 1-2), the processing department steward who was at work that day. Tr. 44-45. In other words, he did not ask that the meeting be postponed or make the presence of Ms. Avila or another steward a condition of continuing the meeting. Tr. 46. In the final analysis, he was not disadvantaged by not having a steward present.

Although Mr. Sanchez testified that he knew Mr. Batcke saw him smoking in the tanker unloading area, it was undisputed that Mr. Batcke did not tell Mr. Sanchez the purpose of the meeting and there was no discussion on the way to the conference room. Tr. 18, lines 18-20, and Tr. 26 and Tr. 90. Mr. Batcke testified it was a really brief meeting. Tr. 84, line 1. A reasonable conclusion is that the meeting was simply to inform him he was suspended and why, and that an investigation would follow. Mr. Batcke told Mr. Sanchez in the presence of Mr. Quinto (his boss) that he saw Sanchez smoking in a dangerous, hazardous material unloading area. Tr. 80, lines 24-25. As a supervisor responsible for the safety of the area, that was completely unacceptable. Tr. 83, lines 11-14. Arguably rhetorically [as it was unusual and unbelievable he would do so], he asked Sanchez why he was smoking in that area! He also asked why he was in that area at that time. Sanchez said he was on break. It was then clearly communicated to Mr.

Sanchez that his smoking in this hazardous area was unacceptable, and Mr. Quinto told Mr. Sanchez that he was suspended pending investigation. Tr. 83, lines 9-25. There was nothing additional to learn from him about his smoking in the posted area, and he was not terminated for taking a break.

The very brief meeting on July 28 was not an investigative interrogation to determine if he was smoking in the hazardous material unloading area—it was a known fact. In determining whether *Weingarten* rights attach, "the pivotal question [...] is whether, in summoning an employee to appear before management, the employer is concerned solely with the administration of discipline or, on the other hand, **seeks to obtain additional facts, evidence or an admission in support of the disciplinary action.**" *See Miceli & Oilfield, Inc*, 337 NLRB 505, 507 (2011).[Emphasis supplied.]

In *Miceli*, the employer observed an employee's persistent tardiness in violation of company policy, and brought the employee into his office to issue a written warning. The Board found that the employer had not violated an employee's *Weingarten* rights, because **"[r]espondent did not need any more evidence, or an admission from [employee], to support its decision."** [Emphasis supplied.]

Somewhat comparative is *The Tampa Tribune* case. See *Media General Operations, Inc.* d/b/a *The Tampa Tribune,* 351 NLRB 1324, 1334 (2007). Therein, an Administrative Law Judge found that an employer was not conducting further investigation in a disciplinary meeting by making a rhetorical, exclamatory statement. There, an employee made derogatory comments about the vice president of the company to another employee. Following an investigation, the employee was terminated in a meeting with multiple managers of the company. There was some discrepancy over what was actually said during the meeting. The employee testified that the

manager began the meeting by asking him if he had made the derogatory statement. Conversely, one manager testified that he began the meeting by telling the employee that he had learned of the comments, while another manager testified that the meeting began with an effectively rhetorical statement that he could not believe that the employee had made those comments about the Vice President. Crediting the testimony of the managers, **the ALJ found that it did not matter which manager's testimony was correct, since neither scenario would have resulted in the meeting becoming investigatory, such that the employee's Weingarten rights would have attached.** The ALJ wrote, "I therefore find that Kerr began the meeting by saying that he had learned McMillen had called Baker a stupid fucking moron (as testified to by Kerr) or that he couldn't believe that he had made the statement (as testified to by Stewart). Either way, Kerr was not seeking an admission from McMillen, and after McMillen interrupted Kerr and said he did make the statement, Kerr did not question him further about it; he simply told him he was fired." *Id.*

Here, Mr. Quinto did not ask Mr. Sanchez anything about his smoking in the prohibited area, but simply told him he was suspended pending investigation.

4. Respondent's Witnesses Were Credible, Unimpeached, and Should Be Credited

The following statements are made with the understanding that it is the tendency of most triers of fact to resolve conflicts in testimony without the necessity of declaring any witness to be a deliberate prevaricator. In most instances, credibility resolutions are made on demeanor, character of the testimony, extent of consistent recollection, conflicts in testimony, the existence or nonexistence of bias, interest, mistaken and/or subjective reactions, or other motive and attitude towards the giving of testimony.

We all know that the truth can be illusive. While the search for the truth is not an exact science, triers of fact typically look for paradoxes and contradictions. More often than not, believability, consistency of recollection, corroboration, and sometimes just plain old common sense or plausibility guides such decisions.

As the Administrative Law Judge gives consideration to the evidence presented in this matter and determines the weight to which he honestly believes the individual evidence is entitled, he no doubt will reflect on his observations of the witnesses and determine who among them is telling the truth.

In doing so, Respondent suggests the Administrative Law Judge consider the following:

1. Mr. Sanchez's testimony as to critical events was at times conflicting or changed, and simply did not ring true—and is simply unreliable.

2. In weighing each witness's demeanor and in determining credibility -- please consider that Mr. Quinto has not been employed by the Respondent since January, 2016 (Tr. 67), has no continuing relationship with the Company (Tr. 74, lines 9), and thus has nothing at all to gain by lying about the July 28 meeting. Moreover, he was not impeached. Significantly, he clearly and unambiguously testified that at no time during the July 28 meeting did Mr. Sanchez ask for a union representative. Tr. 70, lines 9-13.

Likewise, there was no evidence adduced that Mr. Batcke was motivated by self-interest or bias as a witness. He was not impeached. Mr. Batcke told Mr. Sanchez that he was going to have to take him to the conference room. Tr. 80, lines 11-12. It is undisputed that neither Batcke or Sanchez said anything to each other in route to the conference room. Tr. 79, lines 22-24. He did not say anything to Mr. Sanchez in the one or two seconds he was alone in the conference room with Mr. Sanchez. Tr. 81, lines 15-18.

Notably, Mr. Quinto corroborated Mr. Batcke's testimony. Tr. 69-70. Most significantly, Mr. Batcke's unimpeached testimony was that Mr. Sanchez did not ask him or Mr. Quinto for a union representative while in the conference room on July 28 as alleged, and they did not deny him union representation. Tr. 81, lines 20-25, 82, lines 1-5.

Many finders of fact have concluded that an impacted employee is presumed to have an incentive for not telling the truth, and when his testimony is contradicted by one who has nothing to gain or lose, the latter is to be believed.

So, in resolving conflicting testimony, triers of fact often credit the testimony of disinterested witnesses over that of a charging party, absent evidence clearly establishing that witnesses called on behalf of the employer have a motive to lie. Many triers of fact have also recognized that supervisors and disinterested witnesses have a higher goal than attempting to sustain the disciplining of an employee. Thus, in resolving credibility issues, the fact finder may consider not only the demeanor of the witnesses but the motivation of those witnesses as well.

In this case, General Counsel and Charging Party have introduced no evidence, not one scintilla of evidence, as to why either Mr. Quinto or Mr. Batcke would fabricate their accounts of the facts.

3. Please also consider that the record establishes that Mr. Sanchez testified in a contradictory and unreliable fashion, and his self-serving testimony was inherently improbable.

(a) It is undisputed that Mr. Batcke saw Mr. Sanchez smoking in in the hazardous material unloading area at approximately 1:45 p.m. Tr. 17 (Sanchez); Tr. 77 (Batcke). Batcke then contacted Mr. Quinto by phone and gave him a brief explanation. Quinto instructed him to bring him to the conference room. Batcke and Sanchez walked from the bottling line to the offices where the conference room is located. Tr. 78-79. There was no conversation on the

way. Tr. 79, lines 22-24. Batcke deposited Sanchez in the conference room. Tr. 81. Batcke did not say anything to Sanchez the second or two before he went to get Quinto. Tr. 81, lines 15-18. Notably, Sanchez never asked for Ms. Avila or other union representation. Tr. 81-82. Batcke told Sanchez in Quinto's presence what he saw, that his conduct was completely unacceptable, and that the matter needed to be addressed now. Batcke asked him why he was smoking in this area and why was he doing so on company time. Sanchez said he was on break. Quinto told Sanchez he was suspended pending investigation. They all left. Tr. 83-84. Sanchez clocked out at 2:10 p.m. Tr. 95. All of this took approximately 25 minutes.

On the other hand, Mr. Sanchez testified that the meeting with José Quinto and Erik Batcke in the conference room alone took 25 to 30 minutes. Tr. 45. However, at Tr. 46-47, when your Honor asked him about this, he admitted he was not sure how long it lasted (lines 17-21) -- and he said it just felt like it was that long. However, he confirmed at lines 17-21 that they did not talk about anything else.

It is obvious he does not have a superior recollection of the events.

(b) "Thinking something does not make it true. Wanting something does not make it real." Michelle Hodkin, *The Unbecoming of Mara Dyer*

Significantly, Mr. Sanchez's testimony was not reliable and Sanchez contradicted himself, at least, as follows:

Initially, at Tr. 19, lines 17-18, Sanchez claims José Quinto explained to him why no shop steward was there [cf to Tr. 23 below]. He testified Mr. Quinto said, while in the conference room in Mr. Batcke's presence, at Tr. 20, lines 1-3, that he [Mr. Quinto] said she was busy. Then he says Batcke started asking him questions. See lines 4-5.

At Tr. 23, lines 1-6, Sanchez changes his story and says Batcke (see Tr. 22, lines 23-24) told him she [Avila] was busy. *See also* Tr. 27, lines 23-25, and Tr. 28, lines 1-5.

In response to your Honor's question if Batcke left the conference room for a minute or so before he came back, Sanchez said "yes." Tr. 27, lines 19-22. Then, contrary to the above, he responded he was gone five minutes. Lines 23-24.

Also contrary to the above, at Tr. 28, he testifies that Batcke did not explain why she was busy.

Consider further that at Tr. 36, lines 1-3, he says he normally has his cell phone at work. Then at lines 18-20, he says he doesn't normally have a cell phone at work. Subsequently, at Tr. 36, lines 21-22, in response to the question,"... so you don't have a cell phone," he said "No."

Notably at Tr. 37, lines 1-2, he says Batcke stated he personally saw me smoking a cigarette near the tanker. Then at Tr. 40, lines 4-8, he says Batcke did not personally state he saw him. However, on cross examination, when questioned about his NLRB affidavit, he admitted (at lines 14-18) that "Batcke told me he personally seen me smoking next to the tanker truck."

Significantly, please note that at Tr. 41, Sanchez says he raised the issue about wanting a steward when he filed the grievance, when he gave it to Avila. See Tr. 42, lines 1-5. At line 8, he said he wrote out the grievance. Notably, he then went on to testify that he put it in the grievance that he had been denied the opportunity to have a steward. However, Company Exhibit R-1 and cross examination established the above was not true. *See* Tr. 44. There is nothing in grievance about requesting or being denied union representation.

Sanchez then went on to say at Tr. 50, lines 17-18, that he handed the grievance to Avila. At Tr. 51, lines 11-19, he testified no one suggested he file a grievance. He knew he should file

one. Noteworthy is the fact he then says Avila did not ask him any questions about the grievance. He says he just handed it to her. Tr. 51, lines 11-19. Later, he testifies at Tr. 60, lines 15-23, that he had a conversation with Avila about the meeting in the conference room when he filed the grievance. Then at lines 22-23, Sanchez testified that he told her [Avila] that Erik Batcke saw him smoking and that he was suspended until further notice.

Contrary to his prior testimony, he said he asked her why she was not at the meeting and he claims she said she was busy but they called her. See Tr. 61, lines 1-9.

At Tr. 62 -- YET ANOTHER CONTRADICTION. Now he says he contacted Avila about the July 28 meeting and she gave him a copy of the grievance form and then he says to you, Your Honor, that "she emailed the form to me and I personally took it to her after I filled it out." Then at Tr. 64, he says he talked to her on the 28th about no union representative-before he handed her the grievance. At lines 7-9, he says this was the only time he discussed it.

IX. Conclusion

Respondent Sazerac Distillers, LLC, dba Barton Brands of California, Inc., respectfully requests that the Administrative Law Judge dismiss the Amended Complaint in its entirety.

Respectfully submitted this 17th day of June, 2016.

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CERTIFICATE

I hereby certify that on this 17th day of June, 2016, a copy of the above and foregoing Respondent's Brief to The Honorable Ariel L. Sotolongo, Administrative Law Judge, is being duly served this day, by electronic mail upon the following:

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